be enforcing a compromise of an action in the Common Pleas Division. The plaintiff appealed to the Court of Appeal and the appeal was allowed on the ground that the Court had jurisdiction to make the order asked for by the plaintiff.

In his judgment in *Scully v. Dundonald* (5) Malins, V.C. said (at page 665):—

"If I had to decide this case...I should follow the decisions of the Master of the Rolls and Vice-Chancellor Hall in the case which has been referred to, of *Eden v. Naish*, where the Vice-Chancellor followed the decision of the Master of the Rolls in *Hakes v. Hodgkins*. There the Master of the Rolls decided, and in *Eden v. Naish* Vice-Chancellor Hall decided, that where there is a compromise in an existing suit, the terms of that compromise can be enforced by a separate order in the suit, without having recourse to filing another bill or commencing another action to enforce the terms of the compromise."

It is to be observed that in reversing the decision of Malins, V.C., the Court of Appeal differed from him only on the question of jurisdiction. In our opinion, it is plain that the underlying assumption in the judgments of the Lords Justices is that in the passage which we have cited Malins, V.C. correctly stated the law relating to the enforcement of a compromise in a pending action.

It follows therefore. in our judgment, that the procedure adopted by the plaintiffs in the present case was correct and that the Court below had jurisdiction to make the order against which this appeal has been brought.

We think it is desirable to add that we are dealing with a case where the terms of compromise are. as counsel for the defendants has conceded, within the scope of the action. We consider that it is unnecessary in this judgment to deal with the position where an agreement of compromise of an action contains matter which is not within the scope of the action.

For the reasons which we have stated this appeal is dismissed with costs.

Appeal dismissed.

Solicitors: *Braddell Bros.; Rodyk & Davidson.*

In re BAN HONG CO. LTD.

[O.C.J. (Rigby J.) January 13, 1959]

[Penang — Companies (Winding-up) Petition No. 1 of 1958]

Company — Compulsory Winding-up by the Court — Company unable to pay its debts — Companies Ordinance, 1940, s. 166.

This was a petition brought under section 166 of the Companies Ordinance by Messrs. Harrisons & Crosfield (Malaya) Ltd. (hereinafter referred to as the "Petitioners"), as creditors, for the compulsory winding-up by the Court of Messrs. Ban Hong Co. Ltd. (hereinafter referred to as "company") on the grounds that the said company was indebted to the petitioners to the extent of $89,673.75, that the petitioners had demanded payment, that the company has failed to pay, and that it was insolvent and unable to pay its debts.

Counsel on both sides agreed that there were only three main issues for consideration: (i) was there a *bona fide* dispute between the parties as to the liability of the company to pay this alleged debt? (ii) assuming this was a debt due from the company, was it in a position to pay its debts at the time of the presentation of this Petition? and (iii) was it otherwise just and equitable that the company should be wound up?

Held: (1) it is well settled law that a winding-up petition is not to be used as machinery to try a common law action, and that the presentation of a petition for winding-up simply with a view to enforcing payment of a disputed debt is an abuse of the process of the Court and should be dismissed with costs. But in this case there was no *bona fide* dispute as to the liability of the company for the amount claimed between the parties prior to the institution of these proceedings, and there is still no *bona fide* dispute;

(2) the company was unable to pay its debts at the time of the presentation of the petition;

(3) in all the circumstances of the case, it is just and equitable for the Court to order the winding-up of this company.

Observations on the conduct of the company.

COMPANIES WINDING-UP.

F. G. Pooley for the petitioners.

C. O. Lim for the company.

Rigby J.: This was a petition brought under section 166 of the Companies Ordinance by Harrisons & Crosfield (Malaya) Ltd. (hereinafter referred to as the "Petitioners")), as creditors, for the compulsory winding-up by the Court of Messrs. Ban Hong Co. Ltd. (hereinafter referred to as the "Company") on the grounds that the said Ban Hong Co. Ltd. was indebted to the petitioners to the extent of $89,673.75, that the petitioners had demanded payment, that the company had failed to pay, and that it was insolvent and unable to pay its debts.

I was fully satisfied that each and every one of those contentions was well founded and I accordingly made the Order sought.

The petitioners are, *inter alia*, rubber exporters; they have a licence to export rubber, but have no licence to smoke and pack rubber. They are accordingly compelled to purchase their rubber for export from other licensed dealers or producers or other licensed exporters.

The company was licensed to carry on the business of rubber packers and dealers.

In or about February, 1954, the petitioners, in furtherance of their business as rubber

exporters and with the object of securing further stocks of rubber for export, entered into an arrangement with the company whereby they made cash advances to the company against stocks of wet, unprocessed rubber acquired by the company and brought on to the company's premises at Gopeng. These premises consisted of a godown and nine smokehouses. Thereafter, unprocessed rubber was smoked, sorted, correctly graded and packed by the company's employees, in accordance with the terms of its licences, and delivered to the petitioners at their godown at Permatang Pauh, and later Prai. It is abundantly clear that the final price was not to be paid before delivery of the packed and graded bales of rubber at the petitioner's godown, and even then such final price was subject to adjustment depending upon any claims by the overseas consignees as to incorrect quality and/or weight. This was obviously a responsibility of the company since it was the company which did the packing and weighing. The advances made to the company against the unprocessed rubber it brought from time to time on to its premises were, of course, to enable it to do further business and purchase further supplies of unprocessed rubber for processing and delivering to the petitioners to the mutual advantage of both parties. The practice was that as often as there appeared to be a further supply of 10 tons of unprocessed rubber upon the company's premises then the company would apply to the petitioners for a further advance. Daily Stock Statements of the unprocessed rubber on their premises were made and kept by the company and a duplicate copy thereof supplied to the petitioners. After checking the Daily Stock Statements and visually inspecting the unprocessed rubber on the company's premises the petitioners' representative, if satisfied that there appeared to be a further 10 tons of unprocessed rubber on the premises, would authorize a further advance. For the purpose of authorizing such an advance the representative would very largely rely upon the Daily Stock Statements prepared by the company and produced before him, and it would appear that the visual inspection was, to say the least of it, of a somewhat cursory nature. The authorization for such an advance was embodied in the form of a document entitled "Contract For Sale And Purchase — Provisional Advance Against Contract." Specimen copies of such a document are attached to the affidavits of both Mr. Forrester, the petitioners' Penang Manager, and Mr. Chew Chye Leng, the Managing Director of the company. When the rubber had been processed, packed and marked by the company with the particular grade they guaranteed it to be it was delivered in bales to the petitioners' godown. When a sufficient quantity of a particular grade had accumulated at the petitioners' godown, the company would notify the petitioners that such rubber was allocated to one of its sale contracts and the petitioners would thereupon arrange shipment and prepare a final receipt. Specimen copies of a sale contract and Final Account And Receipt are attached to the affidavit of Mr. Forrester and marked "Specimens 'C' and 'E' and included under 'JHF-1'." The Final Account And Receipt shows the price according to the sale contract, the amount advanced under the document headed "Contract For Sale And Purchase — Provisional Advance Against Contract," and the balance still due to the company. This balance would then be paid. It is obvious that, during the course of processing and grading, each individual consignment of wet, unprocessed rubber in respect of which an advance had been given, lost its particular identity. The practice was, therefore, for the contract of sale and Final Account And Receipt to be adjusted to, and to include a deduction of, the earliest advance which had not yet been set off. Such, then, was the method of doing business between the parties.

The petitioners' representative primarily responsible for doing business with the company was Mr. Forrester, Manager of its Penang Branch. Mr. Forrester was on leave in the United Kingdom for some months prior to March, 1958. During the period that he was away business dealings between the two firms were apparently conducted by the Ipoh Branch of the petitioners' firm. Shortly after his return from leave Mr. Forrester observed from a perusal of the company's Daily Stock Statements issued while he was away, together with a record of the advances made, that there appeared to be 180 tons of rubber on the company's premises at Gopeng and only 25 tons of rubber at the petitioners' godown at Prai. The records indicated to him that there had been a progressive delay during the past four or five months in the apparent time taken from the day when an advance was made until the rubber reached the petitioners' godown at Prai. If money was to be advanced by the petitioners against deliveries of rubber a quick turnover was an essential element in order to secure the maximum profits. Mr. Forrester, therefore, informed the company

that on the face of its own Stock Statements it had large quantities of rubber which should be delivered at Prai as expeditiously as possible. As a result of his action there was, for a brief period, an increase in the rate of processed rubber deliveries to the petitioners' godown at Prai. However, on the 12th April, 1958, a check of the company's stock at its Gopeng premises revealed a shortage of 90 tons of rubber. The company does not dispute this shortage.

The petitioners claim that the company is indebted to them to the extent of $102,900 in respect of ten separate and specific advances made to the company, at the request of the company, as against consignments of unprocessed rubber said by them to have been brought upon the company's premises, less the value of certain consignments of rubber subsequently delivered by the company to the petitioners.

That such payments totalling $102,900 were, in fact, made by the petitioners to the company is not disputed, though the nature and effect of those payments and the ownership of the rubber consequent upon such payments is in issue. Nor is it disputed that the payments were made in respect of consignments of unprocessed rubber to that estimated value said to be upon the company's premises. It follows, therefore, that either the Daily Stock Statements prepared by the company and forwarded to the petitioners were false and, when a further advance was required, existing stocks of unprocessed rubber were so re-arranged and prepared as to convey the impression, on visual inspection, that a fresh stock sufficient to warrant the advance sought had been brought on to the company's premises or, alternatively, that fresh consignments were, in fact, brought on to the premises and advances obtained thereon from the petitioners, but that such consignments were subsequently processed and delivered to persons other than the petitioners. In either instance it would seem to be manifest that the Daily Stock Statements, copies of which were supplied to the petitioners, were false.

The loss of the rubber was discovered on the 12th April, 1958. Thereafter the company ceased to carry on business. Between the 14th April and the 12th June, 1958 there were a series of interviews between the petitioners' representatives, either Mr. Cobley or Mr. Forrester, or both, on the one hand, and Mr. Chew Chye Leng, the company's Managing Director, or Mr. Wong Loh Hun, the company's Secretary, or both, on the other hand. I will deal with the argument advanced on behalf of the company at a later stage, but suffice it for me to say now, that I am in no doubt whatsoever that the gist and effect of those interviews was that the company was not then in a position to pay and that the main trend of the discussions was directed as to finding ways and means — including, if necessary, the formation of a new company, guaranteed by Mr. Wong Loh Hun and differently constituted — as to the manner in which the company might meet its liability. I am wholly satisfied that during this material period the company, through its representative, at no time disputed liability in respect of the moneys admittedly advanced to them.

At Mr. Forrester's request, a statement of the company's trading and Profit and Loss Account for the period from the 1st January to the 16th April, 1958, was prepared by Mr. Wong Loh Hun and received by Mr. Forrester on the 1st May, 1958.

On the 8th May Mr. Chew Chye Leng went to see Mr. Cobley, who was, in fact, a Director of the Company, at Singapore, taking a copy of their Profit and Loss Account with him.

On the 12th May the petitioners wrote to Mr. Wong Loh Hun, with a copy to the company's offices at Gopeng, asking for the addresses of the creditors referred to in that statement of account and on the 14th May the company supplied those addresses.

During the month of May, at the request of the petitioners and with the consent of the company, Mr. Sykes of the firms of Buckle, Sykes & Weatherly, Penang, and Brown, Phillips & Stewart, Ipoh, Chartered Accountants, investigated into the affairs of the company.

These matters are, to my mind, entirely consistent with the testimony of Messrs. Cobley and Forrester and the affidavit of Mr. Meek, the petitioners' solicitor, that the company did not dispute liability but were concerned only with the means and methods of settling that liability. If the company, at that stage, disputed the petitioners' claim it is difficult to understand and appreciate why they should not only have complied with the petitioners' request to prepare a statement of the affairs of the company and subsequently supplied a list of addresses of the company's creditors, but also have allowed the petitioners' Accountants to conduct an investigation into the affairs of the company.

On the 24th June the petitioners instituted these winding-up proceedings. On the 8th July the company sent a letter to the petitioners in the following terms:—

"Dear Sirs,

We shall be obliged if you will kindly forward to us your statement of accounts.

As you had only advanced to our company 80% on 3rd grade rubber price, therefore there is a balance of 20% less experience. We shall be grateful if you will kindly send us your cheque for full settlement.

Thanking you in advance."

It is not without significance that that letter was not sent until after these proceedings had been instituted.

Throughout these proceedings both Counsel have agreed that there are three main issues for consideration:—

(1) Is there a *bona fide* dispute between the parties as to the liability of the company to pay this alleged debt?

(2) Assuming this is a debt due from the company, was it in a position to pay its debts at the time of the presentation of this petition? and

(3) Is it otherwise just and equitable that the company should be wound up?

I will deal with these points seriatim. It is well settled law that a winding-up petition is not to be used as machinery to try a common law action, and that the presentation of a petition for winding-up simply with a view to enforcing payment of a disputed debt is an abuse of the process of the Court and should be dismissed with costs.

Mr. C. O. Lim, for the company, in language to which it has been a pleasure to listen, throughout these proceedings has contended forcefully and eloquently that there was, in fact, a dispute as to which of the parties was liable to bear the loss of the 90 tons of rubber admittedly missing. I am wholly satisfied that prior to the institution of the winding-up petition there was never any question between the parties as to the liability of the company for the loss of the rubber and their indebtedness in respect of advances made to them, and that the existence of a so-called dispute is simply an ingenious afterthought arrived at for the sole purpose of resisting these proceedings, and based primarily upon the legal construction which the company now seeks to put on the document entitled "Contract For Sale And Purchase — Provisional Advance Against Contract" made at the time each advance against wet, unprocessed rubber on the company's godown was given. I had equally no doubt that the sole object in resisting this petition was in an attempt to protect the $70,000 debentures, issued as a floating charge on the assets of the company and purporting to be valid with effect from the 11th April, 1958. In view of Mr. C. O. Lim's contention as to the meaning to be placed upon the document "Provisional Advance Against Contract" the document itself requires consideration. It is headed: "Harrisons & Crosfield (Malaya) Ltd. — Contract For Sale and Purchase — Provisional Advance against Contract." It is then dated with the date of the particular advance made. It then reads:—

"Received from Messrs. Ban Hong Co. Ltd., Gopeng, (herein called the 'Sellers' whose Licence is No. 1/58 the following Rubber:—

Quantity: 22,400 lbs. = 10 tons
Grade: INT. 3 RSS (Estimated).

The above rubber is delivered to Harrisons & Crosfield (Malaya) Ltd. (herein called the 'Buyers') for sale to them at the price to be fixed as mentioned below and the Sellers hereby acknowledge the receipt of the advance detailed below in part payment of the purchase price. The price shall be fixed on the thirtieth day from this date or earlier at the sellers' option by agreement or failing agreement at the price the buyers are paying to other dealers for the same grade of rubber on the date the price is fixed. Provided that should the price of rubber decline during such 30 days period to within one cent per pound of the value advanced the buyers shall have the right, unless the sellers shall have margined the position by paying the buyers an agreed sum or by delivering fresh rubber of a value equivalent to the margin, immediately to fix the price.

Provided further that in the event of the sellers failing to perform on the due date any other contract the buyers may now or hereafter have with them the buyers shall have the right to fix the price forthwith of the rubber sold under this contract and to apply the balance of the purchase price due hereunder in satisfaction *pro tanto* of any claims, they may have against the sellers in respect of moneys due or to become due to the buyers by the sellers under any other contract or transaction between them or otherwise."

The estimated value at so much per pound is then stated and an 80% advance on that estimated value, less duty and other charges, is set out. It concludes with a statement of the amount of the advance authorized and is then signed by the representative for and on behalf of both parties and duly stamped. On a consideration of that document alone, it is certainly arguable that there was a completed contract of sale to the petitioners of the whole of the unprocessed rubber referred to in the document that the rubber had been delivered to and passed into the ownership and possession of the petitioners, and that the petitioners had made an advance payment, or payment to account, of 80% of the full purchase price. If that were the true position then, of course, the petitioners were already the owners of the missing rubber by virtue of contracts of sale and delivery, and not only would the loss be their loss but so far from their having any claim against the company for the return of the moneys advanced

they would, indeed, be liable for the payment of the balance of the 20% still due and owing. I have already referred to the letter sent by the company to the petitioners after the institution of these proceedings and dated the 8th July, referring to an advance of 80% and making a claim for the balance of 20%, less expenses. If this were, indeed, the true position between the parties it seems to me quite remarkable that instead of repeatedly negotiating with the petitioners in an attempt to settle the matter and submitting the affairs of the company to examination at the instance of the petitioners' self-appointed Chartered Accountants, the company did not at once say that there was a balance of 20% of the purchase price still due to them on each and every one of the nine contracts of sale for rubber already delivered by them to the petitioners. But taking this document in its proper context and in conjunction with the remaining documents (see the set of documents marked "JHF-1" attached to the affidavit of Mr. Forrester) which constituted the complete contract of sale, I am fully satisfied that the object and intention of this document, headed: "Contract For Sale And Purchase — Provisional Advance Against Contract," was simply to record the transaction of moneys advanced to the company against each fresh consignment of unprocessed rubber brought by them on to their premises, and evidencing the intention of the parties that such rubber should be processed by the company and delivered to the petitioners. It was an advance made by the petitioners to the company against 80% of the estimated value of the processed rubber with the object and intention of ensuring that the rubber, after process, would be delivered to the petitioners and the amount of the advance set off against the final price. It was, in short, a loan.

Mr. Chew Chye Leng himself, in answer to questions put to him in cross-examination admitted:—

(1) That advances were made by the petitioners on the basis of 80% on the rubber delivered to the Gopeng godown;

(2) That both the petitioners and the company kept a running account of the advances and final account;

(3) That they were closed up by first making a contract for a particular sale of rubber on the Singapore Chamber of Commerce f.o.b. contract (see Specimen 'C' of "JHF-1" attached to Mr. Forrester's affidavit) whereby the price was fixed;

(4) That the final account was received by the company after they had delivered the rubber to the petitioners' godown at Prai; and

(5) That the document — Specimen 'E' attached to "JHF-1" of Mr. Forrester's affidavit — constituted the final account.

In support of his argument that the rubber — the 90 tons of missing rubber — had been delivered to and partially paid for by the petitioners and was in their possession when lost, Mr. C. O. Lim referred to, and relied upon, the fact that the company's godown at Gopeng into which the unprocessed rubber was delivered, although belonging to the company, had at all material times been let by them to the petitioners and, furthermore, that it bore a board or plaçard displayed over it bearing the legend: "All rubber in these premises is the property of Harrisons & Crosfield (Malaya) Ltd."

I do not myself attach any importance to this fact. The petitioners had no licence to smoke and pack rubber. The company were licensed packers and had exclusive possession and control over the unprocessed rubber from the time it was delivered to their Gopeng godown to the time when, after being processed, graded and weighed, it was finally delivered by the company to the petitioners' godown at Prai, and a receipt (see copy of Specimen 'D' of "JHF-1" of Mr. Forrester's affidavit) obtained from the petitioners against such delivery.

In my view, on a construction of the documents as a whole the unprocessed rubber remained the property of the company until its final delivery, after process, to the petitioners' godown and completion of the form (Specimen 'C' attached to "JHF-1" of Mr. Forrester's affidavit) completing the contract of sale.

For these reasons I was, and am, fully satisfied that there was no *bona fide* dispute as to the liability of the company for the amount claimed between the parties prior to the institution of these proceedings, and there is still no *bona fide* dispute.

Having satisfied myself that there was at all material times no *bona fide* dispute between the parties as to the liability of the company to repay these sums of money advanced to it, the next question for consideration is: Was the company unable to pay its debts at the time of the presentation of the petition? On the affidavits and oral testimony of Messrs. Cobley and Forrester, and the affidavit of Mr. Meek, I was, and am, in no doubt whatsoever that the company was wholly unable to pay its debts at the time of the presentation of this petition. The effect of the evidence is to make it abundantly clear that Messrs. Chew Chye Leng and Wong Loh Hun were doing everything possible to

compromise the petitioners' claim by payment of a lesser amount.

A number of balance sheets purporting to show the true position of the company at dates between April and June, 1958, were produced in evidence, the most recent of which was one prepared by the company's auditor, Mr. Wong Fook Chew dated the 9th July showing the company's affairs for the first half year ending the 30th June, 1958. Mr. Wong Fook Chew is the brother of Mr. Wong Loh Hun, the company's Secretary. Balance sheets are of little or of no value unless they have some relation to reality and true facts. In this balance sheet the two main assets are stated as:—

"Stock of Rubber: (Pledged with Harrisons & Crosfield (M) Ltd.) $128,478.00
Sundry Debtors ... ... $276,846.02."

Mr. Chew Chye Leng explained the first of those two items as referring to the rubber "delivered" — and I quote his actual words:—

"To Harrisons & Crosfield at the Gopeng godown and referred to in the contract notes 'CCL-4 to 13'."

He added:—

"It does not refer to physical rubber."

Mr. Wong Loh Hun explained this item by saying — and I quote his evidence:—

"This should really be 'goods sold to Harrisons and Crosfield under contract not yet finalised'."

and he added:—

"No, I did not tell my brother (i.e. the auditor) that these 90 tons of rubber had disappeared."

The first balance sheet prepared by Mr. Wong Loh Hun at the request of Mr. Forrester and received by Mr. Forrester on the 1st May, shows the company's affairs from the 1st January to the 16th April, 1958. Amongst the assets of the company the company's stock-in-trade is shown on that balance sheet as "Nil." This was, indeed, correct for the very good reason that after the loss of the 90 tons of rubber had been discovered on the 12th April the surplus of the rubber contained in the company's godown was sold by the petitioners, with the consent and approval of the company, and credited to the account between the parties. There was, therefore, no stock of rubber with the company as at the 30th June when that statement of affairs was prepared. This item, stated as an asset, is wholly untrue and misleading since it purports to comprise the 90 tons of missing rubber and seeks to place it as rubber, in existence, pledged to the petitioners and for which, by implication, the petitioners are liable to the extent stated, whereas in fact no such rubber exists. The item, in any view, should clearly be struck out from the balance sheet. That leaves the item — Sundry Debtors — $276,846.02. According to the evidence of Mr. Chew Chye Leng the majority of these debtors were persons who had supplied rubber to his company but the price of rubber had fallen after delivery with the result that the suppliers had sustained a loss. In other instances advances against delivery of rubber had been taken from the company and no, or no sufficient, rubber delivered. Mr. Chew Chye Leng conceded that the only hope of recovering payment from these debtors would be by continuing to do business with them, a procedure obviously fraught with considerable financial risk to the company itself. It is not without some significance that in the 2½ months before the presentation of the petition no attempt was apparently made to collect these debts. Mr. Cobley said — and I accept it as true — that in the course of discussions with Mr. Chew Chye Leng he, Mr. Chew Chye Leng, estimated that he could only realise about 10% of these debts.

On the evidence I was left in no doubt that the company was unable to pay its debts at the time of the presentation of the petition.

Turning now to the third and last question for consideration, namely: Is it just and equitable that the company should be wound up? I had no hesitation in answering that question in the affirmative. The company was run as a family business. The loss of 90 tons of rubber was disclosed on the 12th April, 1958. During that same month the company made payments exceeding $68,000 to Madam Chan Fook Yuet, a Director of the company and the holder of 900 of the 1,500 issued shares in the company. Madam Chan Fook Yuet is the sister-in-law of Mr. Wong Loh Hun, the Secretary of the company. Further payments during that same month consisted of 10,000 to Mr. Wong Loh Hun and $22,000 odd to Mr. Chew Chye Leng, Managing Director of the company, and a relative, whether by blood or marriage, of Mr. Wong Loh Hun. Mr. Chew Chye Leng was asked in cross-examination:—

"*Q.* So the position was that the shareholders withdrew all the moneys they had in the form of unsecured advances to the company between the 1st and the 16th April?"

and he replied:—

"*A.* They withdrew their credit balances from the firm."

I had, and have, not the slightest doubt that at the time of these withdrawals the company was not in a position to meet its liabilities, and this fact was well known to the shareholders.

On or about the 7th April debentures to secure the sum of $70,000 were issued — $55,000 in favour of Mr. Wong Loh Hun and $15,000 in favour of two other persons. The debentures, as I have already said, were to be effective by way of a floating charge on the assets of the company. It was frankly admitted by Mr. Chew Chye Leng in cross-examination that the object in creating these debentures was to raise the money to enable the shareholders, including Madam Chan Fook Yuet and himself, to withdraw moneys they had invested in the company. Mr. Wong Loh Hun said in evidence that he lent the money in respect of which the debentures were created because he was informed by Mr. Chew Chye Leng that the money was required for trading purposes. He further said that at the time he lent this money he had no idea that his sister-in-law, Madam Chan Fook Yuet was, in fact, withdrawing $69,000 odd from the funds of the company; nor did Mr. Chew Chye Leng inform him that he, Mr. Chew Chye Leng, was withdrawing $22,000 odd. I did not for a moment believe this evidence. Mr. Wong Loh Hun was the Secretary of the company and closely associated with both Madam Chan Fook Yuet and Mr. Chew Chye Leng. The debentures were to be valid with effect from and including the 11th April, 1958. The 11th April was, in fact, the day before the loss of the rubber was discovered and, of course, not very long after Mr. Forrester had pointed out the remarkable difference — according to the company's own Daily Stock Statements — as to the quantity of unprocessed rubber still on the company's premises and the processed rubber delivered to the petitioners' godown. I had no doubt whatsoever that at the time of all these transactions the responsible Directors and the Secretary of the company must have known perfectly well that it was not in a position to meet its liabilities.

One last matter for comment. Ninety tons of rubber was admittedly found to be missing from the company's premises on the 12th April. The company had obtained advances totalling over $100,000 from the petitioners on the strength of 90 tons of unprocessed rubber allegedly delivered on to the company's premises for processing and final delivery to the petitioners. Either these 90 tons of rubber were not delivered on to the company's premises and the petitioners were induced by way of false pretences to make these advances, or they were delivered and advances obtained thereon but subsequently the rubber, whether before or after process, was delivered to a destination other than the petitioners. Under the Rubber Supervision Enactment licensed rubber dealers are obliged to record full particulars of all transactions relating to the purchase, sale or consignment of rubber. Throughout these proceedings — and, indeed, throughout the investigations conducted by Mr. Sykes, Chartered Accountant, into the company's affairs at the instance of the petitioners, — the company has steadfastly refused to produce or disclose any of its stock records which were kept — or which should have been kept — by it of transactions under the Rubber Supervision Enactment. Mr. C. O. Lim has urged with truth that this is not a common law action and the petitioners are not entitled to disclosure or discovery of the company's books or documents. This is undoubtedly true. But when the final issue comes before me as to whether, in all the circumstances of the case, it is just and equitable for the Court to order the winding-up of this company, the conduct of the company in relation to the management of its affairs in accordance with the law appears to me to be clearly a matter for comment and consideration. On the facts of this case I hope and trust that those responsible for the enforcement of the Rubber Supervision Enactment will not let the affairs of this company pass without careful consideration and scrutiny of its conduct.

It was for these reasons that I made an Order under section 166 of the Companies Ordinance for the compulsory winding-up of this company.

Order accordingly.

Solicitors: *Presgrave & Matthews; Lim, Lim & Oon.*

PRACTICE NOTE — PRIVY COUNCIL — CRIMINAL APPEAL

In Re MUHAMMAD NAWAZ & ORS., PETITIONERS

[J.C. (Viscount Simon L.C., Lords Atkin, Thankerton and Russell of Kilowen, and Sir George Rankin) July 16, 1941]

Privy Council — Criminal appeals — Petitions for special leave to appeal in forma pauperis — Certification — "Reasonable ground" — Review of criminal proceedings — Principles applicable — Judicial Committee Rules, 1925, r. 8. *

The Judicial Committee is not a revising Court of criminal appeal: that is to say, it is not prepared or

* See now r. 8 of the Judicial Committee Rules, 1957.